

Contributors

Thomas C. Berg is the James L. Oberstar professor of law and public policy at the University of St. Thomas School of Law (Minnesota), where he teaches constitutional law, religious liberty, intellectual property, and the religious liberty appellate clinic. In the clinic he supervises students writing briefs in major religious liberty cases, drawing on his experience drafting more than 50 briefs on issues of religious liberty and free speech in the Supreme Court and lower courts. Berg is also among the nation's leading scholars of law and religion. He has written more than 50 book chapters and journal articles and dozens of shorter pieces on religious freedom, constitutional law, and the role of religion in law, politics and society. His work has been cited several times by the U.S. Supreme Court and federal courts of appeals. He is the author of several books, including a leading casebook, *Religion and the Constitution* (with Michael McConnell and Christopher Lund), and *The State and Religion in a Nutshell*, and is at work on a new book, *Protecting Religious Liberty in a Polarized Age*. His other chief scholarly interest is the relation of intellectual property rights, social justice, and human development; he is co-editor of a forthcoming book concerning moral and religious perspectives on biotechnology patents. He received a B.S. in journalism from Northwestern University, an M.A. in philosophy and politics from Oxford University (as a Rhodes Scholar), and both an M.A. in religious studies and a J.D. from the University of Chicago. In law school, Berg served as executive editor of the law review and won two prizes for legal scholarship and writing. After clerking for Judge Alvin Rubin of the U.S. Court of Appeals for the Fifth Circuit, Berg practiced law with Mayer, Brown and Platt doing commercial litigation, appellate litigation, and nonprofit institutions' legal work.

Joseph Bishop-Henchman is executive vice president at the Tax Foundation, where he analyzes state tax trends, constitutional issues, and tax law developments. Joe has testified or presented to officials

in 36 states, testified before Congress six times, and has written over 75 major studies on tax policy. In 2010, he was identified in *State Tax Notes* as among four people who “will likely dominate the field in the next 10 years.” His expertise has been cited by the *Economist*, *New York Times*, *Wall Street Journal*, *USA Today*, *Washington Post*, and many others. He is the author of a book on distinguishing taxes from fees and the co-author of books on tax policy in North Carolina, Nebraska, and Nevada. His article *Why the Quill Physical Presence Rule Shouldn't Go the Way of Personal Jurisdiction* has been cited as a “spirited defense” of keeping tax jurisdiction based on physical presence. Before joining the Tax Foundation in 2005, he worked in the historic 2003 California recall election as press/policy aide to gubernatorial candidate and former baseball commissioner Peter Ueberroth, helped organize rallies against wasteful spending and the curfew law in his native San Diego County, and interned with the Office of the D.C. Attorney General, Citizens Against Government Waste, and University of California outreach in California’s Central Valley. He is admitted to practice law in New York, Maryland, D.C., and before the U.S. Supreme Court. He holds a law degree from George Washington University and a bachelor’s degree in political science with a minor in public policy from the University of California, Berkeley.

Josh Blackman is Professor of Law at the South Texas College of Law Houston. He specializes in constitutional law, the U.S. Supreme Court, and the intersection of law and technology. Josh is the author of the critically acclaimed *Unprecedented: The Constitutional Challenge to Obamacare* (2013), as well as *Unraveled: Obamacare, Religious Liberty, and Executive Power* (2016). He has also co-authored, with Randy E. Barnett & Josh Blackman, the leading case book *Constitutional Law: Cases in Context* (3rd Edition, Wolters Kluwer 2017). Josh was selected by Forbes Magazine for the “30 Under 30” in Law and Policy, has testified before the House Judiciary Committee on the constitutionality of executive action on immigration, and is an adjunct scholar at the Cato Institute. Josh is the founder and President of the Harlan Institute, the founder of FantasySCOTUS, the Internet’s Premier Supreme Court Fantasy League, and blogs at JoshBlackman.com. Josh leads the cutting edge of legal analytics as Director of Judicial Research at LexPredict. He is the author of over two dozen law review articles, and his commentary has appeared in the *New York Times*, *Wall Street*

Journal, Washington Post, USA Today, L.A. Times, and other national publications. Josh clerked for the Honorable Danny J. Boggs on the U.S. Court of Appeals for the Sixth Circuit and for the Honorable Kim R. Gibson on the U.S. District Court for the Western District of Pennsylvania. Josh is a graduate of the George Mason University School of Law.

Mark Brnovich was inaugurated as Arizona’s Attorney General in 2015. He previously served as director of the Arizona Department of Gaming, as an assistant U.S. attorney for the District of Arizona, and as an assistant attorney general with the state. He has also been a judge pro tem of Maricopa County Superior Court, deputy Maricopa County attorney, command staff judge advocate in the U.S. Army National Guard, and director of the Center for Constitutional Government at the Goldwater Institute. Brnovich is known for restoring public confidence in the office of “Arizona’s Top Cop,” for assembling some of the nation’s most talented public servants for his administration, and for his administration’s efforts in the area of consumer protection. Since Brnovich has been attorney general, the office has helped return over \$130 million to Arizona’s consumers. More recently, he was recognized as a “Leader of the Year” in public safety for his work in the area of law enforcement and consumer protection and advocacy.

Trevor Burrus is a research fellow in the Cato Institute’s Robert A. Levy Center for Constitutional Studies and Center for the Study of Science, as well as managing editor of the Cato Supreme Court Review. His research interests include constitutional law, civil and criminal law, legal and political philosophy, legal history, and the interface between science and public policy. His academic work has appeared in journals such as the *Harvard Journal of Law and Public Policy*, the *New York University Journal of Law and Liberty*, the *New York University Annual Survey of American Law*, the *Syracuse Law Review*, and many others. His popular writing has appeared in the *Washington Post*, *New York Times*, *USA Today*, *Forbes*, Huffington Post, and others. Burrus lectures regularly on behalf of the Federalist Society, the Institute for Humane Studies, the Foundation for Economics Education, and other organizations, and he frequently appears on major media outlets. He is also the co-host of *Free Thoughts*, a weekly podcast that

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Lucian E. Dervan is associate professor of law and director of criminal justice studies at Belmont University College of Law in Nashville. He focuses on domestic and international criminal law and is the recipient of numerous awards for his teaching and scholarship. Dervan is the author of two books and dozens of book chapters and articles. He is also the founder and author of *The Plea Bargaining Blog* and a contributing editor to the *White Collar Crime Prof Blog* (a member of the Law Professor Blogs Network). In addition to his writings, he regularly lectures regarding criminal law and has been invited to speak before the U.S. House Judiciary Committee, the U.S. Sentencing Commission, and the International Criminal Tribunal for the former Yugoslavia. Professor Dervan currently serves as chair of the ABA Criminal Justice Section. He is also the chair of the ABA Global White Collar Crime Institute and a member of the International Criminal Justice Standards Task Force. He also serves on the advisory committee of the NACDL White Collar Criminal Defense College at Stetson and as a faculty member at the program. Prior to joining the academy, Professor Dervan served as a law clerk to the Honorable Phyllis A. Kravitch of the U.S. Court of Appeals for the Eleventh Circuit. He also practiced law with King & Spalding LLP and Ford & Harrison LLP. Professor Dervan received his J.D. with high honors from Emory University School of Law, where he was an Emory Scholar, served as an articles editor for the *Emory Law Journal*, and was elected a member of the Order of the Coif. He received his B.A. with Honors from Davidson College.

David F. Forte is professor of law at Cleveland State University, where he was the inaugural holder of the Charles R. Emrick, Jr. – Calfee Halter & Griswold Endowed Chair. Recently, he was the Garwood Visiting Professor at Princeton University in the Department of Politics and Visiting Fellow at the James Madison Program in American Ideals and Institutions. He also held the position of Consultor to the Pontifical Council for the Family under Pope St. John Paul II and

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Philip Hamburger is the Maurice and Hilda Friedman Professor of Law at Columbia Law School and the president of the New Civil Liberties Alliance. He is a leading scholar of constitutional law and its history, whose work spans religious liberty, freedom of speech, academic censorship, judicial review, the office and duty of judges, administrative power, the early development of liberal thought, and other areas. His books are *Separation of Church and State* (2002); *Law and Judicial Duty* (2008); *Is Administrative Law Unlawful?* (2014); and *The Administrative Threat* (2017). Before going to Columbia, Hamburger was the John P. Wilson Professor at the University of Chicago Law School, where he directed the Bigelow Program and legal history program. Earlier, he was the Oswald Symyster Colclough Research Professor at George Washington University Law School and a professor at the University of Connecticut Law School. He has been a visiting professor at the University of Virginia Law School and Northwestern Law School, where he was the Jack N. Pritzker Distinguished Visiting Professor of Law. Earlier, he practiced law in Philadelphia, specializing in business and corporate tax. He received his J.D. from Yale Law School.

James Knight is a legal intern in the Cato Institute's Robert A. Levy Center for Constitutional Studies. He received his B.A. *magna cum*

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Jennifer L. Mascott is an assistant professor of law. She also previously served as faculty director of the Supreme Court and administrative law clinics at Scalia Law School at George Mason University's Antonin Scalia Law School. Mascott teaches administrative law and writes in the areas of administrative and constitutional law and statutory interpretation. Her scholarship has been cited by the Supreme Court and has been published or is forthcoming in the *Stanford Law Review*, *George Mason Law Review*, *George Washington Law Review*, *BYU Law Review*, and *Loyola Journal of Regulatory Compliance*. The well-known *Legal Theory Blog* has reviewed her work as "path breaking," and she is a permanent commentator at the *Yale Journal of Regulation's Notice and Comment* blog. Mascott is a public member of the Administrative Conference of the United States and a former law clerk to Supreme Court Justice Clarence Thomas and Judge Brett M. Kavanaugh of the U.S. Court of Appeals for the D.C. Circuit.

Robert McNamara serves as a senior attorney with the Institute for Justice. He joined the Institute in August 2006 and litigates cutting-edge constitutional cases protecting free speech, property rights, economic liberty, and other individual liberties in both federal and state courts. McNamara's work has resulted in court victories for property owners fighting eminent domain abuse, tour guides fighting unconstitutional restrictions on their speech, taxi drivers seeking the right to own their own business, and many others. He also litigates in defense of innovation and entrepreneurship in medical care and was co-counsel in *Flynn v. Holder*, IJ's landmark challenge to the federal prohibition on compensating bone marrow donors. McNamara's writing has been published by outlets including the *New York Times*, *Wall Street Journal*, *Washington Post*, and dozens more nationwide. His opinions and views on legal issues have been featured in radio and television programs ranging from NPR's *All Things Considered* to Fox News Channel's *Hannity & Colmes*. Robert is a graduate of Boston University and the New York University School

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Erin E. Murphy is a partner in the Washington office of Kirkland & Ellis LLP. Her practice focuses on Supreme Court, appellate, and constitutional litigation. She has argued four cases before the Supreme Court, including successfully arguing *Gill v. Whitford*, *McCutcheon v. FEC*, and *Texas v. United States*. Erin has been recognized by the *National Law Journal* as one of the nation's "Outstanding Women Lawyers" and a "Rising Star." She has been ranked by *Chambers & Partners* as one of the nation's top appellate lawyers; has been recognized by *The Legal 500 U.S.* for her appellate work; has been listed in *The Best Lawyers in America* for appellate practice; and was one of 10 lawyers featured on LinkedIn's list of "Top Professionals 35 and Under." Erin's work before the Supreme Court has included briefing such high-profile cases as *NFIB v. Sebelius*, *Hughes v. Talen Energy Marketing*, and *ABC v. Aereo*. She also has a robust practice before the federal courts of appeals, where she has presented argument before most of the circuits on several important statutory and constitutional questions, including the scope of the Second Amendment, the Takings Clause, and the National Labor Relations Act. Erin is the co-chair of programming for the Edward Coke Appellate Inn of Court, has taught as an adjunct professor at Georgetown University, and frequently speaks on topics relating to the Supreme Court and appellate advocacy.

Walter Olson is a senior fellow at the Cato Institute's Robert A. Levy Center for Constitutional Studies and is known for his writing on the American legal system. His books include *The Rule of Lawyers*, on mass litigation, *The Excuse Factory*, on lawsuits in the workplace, and most recently *Schools for Misrule*, on the state of the law schools. His first book, *The Litigation Explosion*, was one of the most widely discussed general-audience books on law of its time. It led the *Washington Post* to dub him "intellectual guru of tort reform." Active on social media, he is known as the founder and principal writer of what is generally considered the oldest blog on law as well as one of the most popular, *Overlawyered.com*. He has advised many public officials from the White House to town councils and in 2015 was named by Gov. Larry Hogan to be co-chair of the Maryland Redistricting Reform

Commission, which issued its report recommendations later that year to acclaim across the state. Before joining Cato, Olson was a senior fellow at the Manhattan Institute and an editor at the magazine *Regulation*, then edited by future Supreme Court Justice Antonin Scalia. Olson's more than 400 broadcast appearances include all the major networks, NPR, the BBC, *The Diane Rehm Show*, and *Oprah*.

Roger Pilon is vice president for legal affairs at the Cato Institute, the founding director of Cato's Center for Constitutional Studies, the inaugural holder of Cato's B. Kenneth Simon Chair in Constitutional Studies, and the founding publisher of the *Cato Supreme Court Review*. Before joining Cato he held five senior posts in the Reagan administration at the Office of Personnel Management, the State Department, and the Justice Department, and was a National Fellow at Stanford's Hoover Institution. In 1989, the Bicentennial Commission presented him with its Benjamin Franklin Award for excellence in writing on the U.S. Constitution. In 2001, Columbia University's School of General Studies awarded him its Alumni Medal of Distinction. Pilon lectures and debates at universities and law schools across the country and testifies often before Congress. His writings have appeared in major academic and popular journals and he appears often on radio and TV. Pilon holds a B.A. from Columbia University, an M.A. and a Ph.D. from the University of Chicago, and a J.D. from the George Washington University School of Law.

Ilya Shapiro is a senior fellow in constitutional studies at the Cato Institute and editor-in-chief of the *Cato Supreme Court Review*. Before joining Cato, he was a special assistant/advisor to the Multi-National Force in Iraq on rule of law issues and practiced international, political, commercial, and antitrust litigation at Patton Boggs and Cleary Gottlieb. Shapiro is the co-author (with David H. Gans) of *Religious Liberties for Corporations? Hobby Lobby, the Affordable Care Act, and the Constitution* (2014). He has contributed to many academic, popular, and professional publications and regularly provides media commentary—including an appearance on the *Colbert Report*—and is a legal consultant to CBS News. Shapiro has testified before Congress and state legislatures and, as coordinator of Cato's amicus brief program, has filed more than 300 "friend of the court" briefs in the Supreme Court. He lectures regularly on behalf of the Federalist

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Paul Sherman is a senior attorney with the Institute for Justice. He joined the Institute in July 2007 and litigates cutting-edge constitutional cases protecting the First Amendment, economic liberty, property rights, and other individual liberties in both federal and state courts. Sherman has extensive experience litigating First Amendment cases. He previously represented syndicated newspaper columnist John Rosemond in a successful First Amendment challenge to occupational licensing laws that threaten to silence ordinary parenting advice. Sherman also represented blogger Steve Cooksey in a First Amendment challenge to North Carolina’s dietetics law. In addition to his work on occupational speech, Sherman has litigated numerous campaign finance cases. He served as co-counsel in *SpeechNow.org v. FEC*, which the Congressional Research Service described as representing one of “the most fundamental changes to campaign finance law in decades.” Sherman has challenged government overreach by dental and veterinary licensing boards in Alabama, Connecticut, Georgia, and Maryland. He is a prolific media writer and his views on the First Amendment and constitutional law have appeared in the *New York Times*, *Washington Post*, *Wall Street Journal*, and other media outlets. Sherman received his law degree from the George Washington University Law School in 2006. Before coming to the Institute, he worked as the associate director of the Center for Competitive Politics.

Rodney A. Smolla is dean and professor of law at the Delaware Law School of Widener University, in Wilmington, Delaware. He is a nationally known scholar on matters relating to constitutional law, civil rights, freedom of speech, and mass media, particularly matters

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